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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Eligibility for the Specialized Mobile)
Radio Services and Radio Services)
in the 220-222 MHz Land Mobile Band)
and Use of Radio Dispatch Communications)

GN Docket No. 94-90

To the Commission:

COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC") hereby submits these Comments in response to the Commission's Notice of Proposed Rulemaking herein, which was released August 11, 1994. In that Notice, the Commission proposed to amend the rules governing licensee eligibility in the Specialized Mobile Radio ("SMR") service and in the commercial 220-222 MHz land mobile services.¹ Currently, those rules prohibit wireline telephone common carriers that provide local exchange service from holding SMR licenses and 220-222 MHz licenses. In the Notice, the Commission proposed to eliminate that wireline restriction. The Commission also proposed to eliminate its current prohibition on the provision of dispatch service by cellular licensees and other licensees in the Public Mobile Services.²

SBC supports the Commission's proposals herein. The elimination of the rule prohibiting the control of SMR licenses by wireline carriers is particularly important and long overdue. The rule does not serve the public interest and is particularly anomalous in light of

¹47 C.F.R. §§ 90.603(c), 90.703(c) (1993).

²47 C.F.R. §§ 22.519(a), 22.91(d) (1993).

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the development of the SMR industry in the past 20 years. Likewise, the imposition of the same restriction on the 220-222 MHz service does not further the public interest. Finally, the Commission's proposal to eliminate the prohibition on the provision of dispatch service by cellular licensees and other Public Mobile Services licensees is sensible and should be adopted.

I. Background of the Prohibition of Wireline Carrier Control of an SMR License

In 1974, the Commission established the SMR service as a private land mobile radio service in the 800 MHz band, and it adopted the prohibition on wireline carrier control of an SMR license without supporting record.³ The Commission has subsequently suggested that the restriction was adopted in order to preserve the service for private use since at that time the Commission was considering licensing all cellular service spectrum to wireline carriers.⁴ On January 10, 1986, the Commission released a Notice of Proposed Rulemaking in PR Docket No. 86-3 proposing to eliminate the prohibition of wireline carrier control of an SMR license, stating that such an action would serve the public interest by increasing competition.⁵ A full comment cycle followed, with most commenters supporting elimination of the restriction.⁶

³See *Land Mobile Radio Service*, Docket 18262, *Second Report and Order*, 46 F.C.C.2d 752, 463-64 (1974), *recon. on other grounds, Memorandum Opinion and Order*, 51 F.C.C.2d 945 (1975), *aff'd sub nom. NARUC v. FCC*, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976).

⁴This concern was eliminated in 1981 when the Commission divided the 40 MHz of spectrum allocated to cellular radio service, with 50% of the spectrum allotted to wireline carriers and the other 50% to non-wireline carriers. *Report and Order*, Docket No. 79-318, 86 F.C.C.2d 469, 491 (1981).

⁵*SMR Eligibility*, PR Docket 86-3, *Notice of Proposed Rulemaking*, 51 Fed. Reg. 2910 (Jan. 22, 1986).

⁶The following parties filing comments in PR Docket 86-3 supported elimination of the rule: NewVector Communications, Inc.; Anchorage Telephone Utility; Mountain States Telephone and Telegraph Co., Northwestern Bell Telephone Co., and Pacific Northwestern

While PR Docket No. 86-3 was pending, the Commission granted conditional waivers of the rule allowing wireline carriers to acquire SMR licensees as part of larger corporate acquisitions.⁷ Then, in 1992, the Commission terminated Docket No. 86-3 on the grounds that the record had become stale, and it retained the prohibition on wireline carrier control of an SMR license pending further evaluation.⁸ The *Termination Order* in PR Docket No. 86-3 also terminated all conditional waivers that had been previously granted, but gave recipients of the waivers an opportunity to re-justify the waivers. Three of the recipients of the waivers⁹ filed requests to reinstate the waivers. In addition, three additional waiver requests were subsequently filed.¹⁰ The Commission took no action on the pending waiver requests until April 12, 1994, when the Commission sought comment on the requests. Nineteen entities submitted comments on the waiver requests; five parties submitted reply comments. As the Commission pointed out in the Notice in the present proceeding,¹¹ most of those parties supported the elimination of the prohibition of wireline carrier control of SMR licenses. These waiver requests are still pending.

Bell Telephone Co.; United States Telephone Association; Matanuska Telephone Association, Inc.; GTE; General Electric Co.; NYNEX Corp.; BellSouth Corp.; Ameritech Mobile Communications, Inc.; National Telephone Cooperative Association; and SBC. The following parties opposed the complete elimination of the rule: Motorola; American SMR Network Association, Inc.; Burtons Communications, Inc.; NABER; and Triangle Communications, Inc.

⁷Waivers were granted to Pacific Telesis, Inc.; SBC; Advanced Paging Services, Inc.; US West Paging, Inc.; and Bell Atlantic Enterprises International, Inc.

⁸*Termination Order*, 7 F.C.C.R. at 4398.

⁹Bell Atlantic; US West Paging, Inc.; and SBC.

¹⁰RAM Mobile Data USA Limited; Cass Cable TV, Inc.; and American Paging, Inc.

¹¹*Notice*, ¶ 10.

II. The Commission Should Adopt Its Tentative Conclusions and Eliminate the Prohibitions on Wireline Common Carrier Control of SMR Licenses and 220-222 MHz Licenses.

A. Entry of Wireline Carriers into the SMR Market Would Not Chill Further Development of the Market.

As the Commission stated in the Notice,¹² the SMR industry has changed dramatically and dynamically in the past twenty years. The Commission has decided to permit SMR service to compete directly with cellular service.¹³ Nextel, the leading SMR licensee, has the potential to serve 200 million customers in at least 47 of the top 50 metropolitan markets.¹⁴ As the Commission pointed out in the Notice,¹⁵ it has also allowed SMR providers to hold broadband PCS licenses without restriction, except to the extent such companies also hold attributable cellular interests, and to hold narrowband PCS licenses entirely without restriction. The mobile radio services industry is robust, the SMR and 220-222 MHz licenses in most markets have been granted, and the majority of SMR facilities have been constructed. The Commission is correct in its tentative conclusion that wireline carrier participation in the SMR and 220-222 MHz markets would not harm competition. In fact, by permitting more options to SMR providers seeking strategic alliances with other telecommunications providers, removal of the restriction on wireline carrier control of an SMR license could actually enhance the development of the market without negative impacts on competition.

¹²Notice, ¶¶ 15-16.

¹³*Request of FleetCall, Inc. for Waiver and Other Relief to Permit Creation of Enhanced SMR in Six Markets*, 6 F.C.C.R. 1533, *recon. dismissed*, 6 F.C.C.R. 6989 (1991).

¹⁴*MCI Plans Big Nextel Stake as a Move into Wireless*, New York Times, March 1, 1994, at p. 9. *MCI Goes for 'NOW' Wireless Technology*, Communications Daily, March 1, 1994, at p. 1.

¹⁵Notice, ¶ 17.

B. Entry of Wireline Carriers into the SMR Market Would Not Cause Competitive Harm.

As the Commission tentatively concluded in the Notice,¹⁶ adequate regulatory safeguards that are less onerous than the current prohibition are available and actually already in place to protect competition in the wireless market from any competitive harm by wireline carriers. The particular competitive harms mentioned are, of course, (1) discrimination by wireline carriers in the offering of interconnection to non-affiliated SMR licensees; and (2) use of wireline carrier market power in the local exchange market to cross-subsidize SMR services, thereby undercutting potential competition.

As the Commission stated, the Communications Act, as amended, requires wireline common carriers to interconnect with CMRS providers, which includes any SMR or commercial 220-222 MHz licensee utilizing interconnection, on reasonable request. The Commission also has the authority to require such interconnection with wireline common carriers for SMR providers that remain PMRS providers. Such interconnection would be provided pursuant to the regulatory safeguards that have worked well for interconnection between cellular carriers and the local exchange network. Specifically, the procedures call for interconnection on reasonable request, on terms no less favorable than those provided to their own affiliated cellular carriers, pursuant to negotiated agreements arrived at through good faith negotiations.¹⁷ Most significantly, as the Commission pointed out in the Notice,¹⁸ it is unaware of any pending complaints alleging discriminatory interconnection filed by unaffiliated cellular entities against

¹⁶Notice, ¶ 18.

¹⁷Notice, ¶ 19 and n.60.

¹⁸Notice, n.73.

wireline carriers with cellular affiliates. In light of that fact, it appears that the regulatory safeguards to prevent discriminatory interconnection practices are working exceptionally well and should work well with all wireless services.

Likewise, the Commission described the accounting safeguards that are in place to protect against cross-subsidization of wireless service by the local exchange service provided by wireline carriers.¹⁹ The costs of CMRS providers that are affiliated with wireline carriers are separated as nonregulated activities from the costs of the regulated activities of the carrier. The specific rules applicable to accounting for the nonregulated activities of a common carrier will provide adequate safeguards against cross-subsidization. As the Commission pointed out, these regulatory safeguards were deemed adequate and appropriate to prevent cross-subsidization in the provision of broadband PCS service by wireline carriers, and the Commission specifically declined to impose any separate subsidiary requirement for wireline carriers that wished to provide PCS service.²⁰ Certainly, that conclusion was appropriate, and it is even more appropriate in the SMR and commercial 220-222 MHz services where spectrum is already for the most part licensed, facilities are constructed or are being constructed, and services are being provided.

III. The Commission Should Terminate the Prohibition on Common Carrier Dispatch Service.

The Commission currently prohibits common carriers licensed after January 1, 1982, including all cellular licensees, from offering dispatch services,²¹ which are, of course,

¹⁹Notice, ¶¶ 20 and 27; nn.64, 76-77.

²⁰Notice, ¶ 27.

²¹47 C.F.R. §§ 22.519(a), 22.911(d) (1993).

the traditional services provided by SMR licensees. Congress has given the Commission the discretion to terminate this prohibition. The Commission thus proposes in this proceeding to amend its rules to permit all mobile service common carriers to provide dispatch service. The Commission has tentatively concluded that the repeal of the prohibition would provide consumers with expanded choice and lower prices.²² SBC agrees with the Commission's tentative view that the dispatch prohibition is outdated and unnecessary in the current regulatory and competitive environment.²³ Since the dispatch market has had 20 years to develop, and since cellular providers are the only major category of carriers prohibited from participating in the market, lifting the prohibition could not logically have any adverse impact on competition in the market. In fact, removing the prohibition would promote competition (and customer choice) by allowing entry by companies that are experienced in providing wireless services to the public in an efficient manner. Further, since SMR providers can compete directly with cellular providers and are not precluded from offering dispatch services, it makes no sense to preclude cellular providers from offering dispatch services. Therefore, removal of the prohibition would not only benefit the dispatch industry and its customers, but it would also be consistent with the goal of regulatory parity for similar carriers providing similar services.

IV. Conclusion.

SBC supports without exception the Commission's tentative conclusions in this proceeding. First, SBC supports the elimination of the prohibition on wireline common carrier control of SMR and commercial 220-222 MHz service licenses. Second, SBC supports the

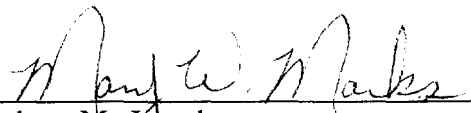
²²Notice, ¶ 20.

²³Notice, ¶ 31.

Commission's conclusion that in connection with the elimination of that prohibition, existing regulatory and accounting safeguards adequately protect wireless providers from anti-competitive practices by wireline carriers, such as discriminatory interconnection or cross-subsidization. Finally, SBC agrees that the prohibition of carriers licensed since January 1, 1982 from offering dispatch services should be eliminated in its entirety. In the currently vigorous and highly competitive wireless service environment, these actions by the Commission are prudent and in the public interest. Elimination of unnecessary eligibility restrictions will add flexibility to strategic relationships and will actually foster even more competition in these markets.

Respectfully submitted,

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